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CLERK, U.S. DISTRICT COURT
WESTERN DISTRICT OF TEXAS
BY ______ DEPUTY

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
EL PASO DIVISION

UNITED STATES OF AMERICA	§	
ex rel. NEVAREZ LAW FIRM, PC,	§	
NEVAREZ LAW FIRM, PC,	§	
	§	
PLAINTIFFS,	§	
v.	§	**CAUSE NO. 3:15-cv-00297-DB**
	§	
DONA ANA TITLE COMPANY,	§	**FILED UNDER SEAL**
STEVE PARSLEY,	§	**AND IN CAMERA**
SHAWNA BLOUNT f/k/a SHAWNA GONZALES,	§	
JACQUE SELBY,	§	
FIRST AMERICAN TITLE GUARANTY COMPANY	§	
f/k/a UNITED GENERAL TITLE INSURANCE	§	
COMPANY,	§	
FIRST AMERICAN TITLE INSURANCE COMPANY,	§	
FIRST AMERICAN FINANCIAL CORPORATION,	§	
ARACELI HERRERA,	§	
TOMASA R. ROJAS,	§	
a/k/a Tomasa Rojas,	§	
a/k/a Tomasa Rodriguez,	§	
a/k/a Tomasa Rodriguez Rojas,	§	
a/k/a Tomasa R. De Rojas,	§	
a/k/a Tomasa R. Derojas,	§	
a/k/a Tomasa R. Rodriguez,	§	
a/k/a Tomasa Rodriguez Deroja,	§	
a/k/a Tomasa Rodriguezderoja,	§	
a/k/a Tomasa Rodriguez Derojas,	§	
a/k/a Tomasa Rodriguezderojas,	§	
a/k/a Tomasa Rodriguez-Deroja,	§	
a/k/a Tomasa Rodriguez-Derojas,	§	
JOSE LUIS ROJAS,	§	
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a/k/a JOSE ROJAS,	§	
a/k/a JOSE RODRIGUEZ,	§	
a/k/a JOSE LUIS RODRIGUEZ,	§	
a/k/a JOSE L ROJAS,	§	
ARTEMIO JAYME,	§	
VIVIANA JAYME,	§	
MARCO AURELIO JAYME,	§	
PAUL JAYME,	§	
MARIANA JAYME,	§	
GABRIELA JAYME,	§	

TATIANA JAYME, §
ZACOUR & ASSOCIATES, INC., §
PAUL G. ZACOUR, §
BANK OF AMERICA CORPORATION, §
COUNTRYWIDE HOME LOANS, INC., and §
COUNTRYWIDE HOME LOANS, INC. §
d/b/a AMERICA'S WHOLESALE LENDER, §
§
DEFENDANTS. §

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PLAINTIFF'S MOTION FOR LEAVE TO FILE PLAINTIFF'S FIRST AMENDED COMPLAINT

TO THE HONORABLE DISTRICT COURT JUDGE DAVID BRIONES:

NOW COMES the NEVAREZ LAW FIRM, PC, Plaintiff in the above-styled and numbered cause of action (hereinafter referred to as "Plaintiff"), by and through the undersigned counsel, and hereby files this "Plaintiff's Motion For Leave To File Plaintiff's First Amended Complaint" (hereinafter referred to as the "Motion"), and in support of such motion respectfully shows the Court the following:

I. INTRODUCTORY STATEMENT.

1. Plaintiff seeks leave to file "Plaintiff's First Amended Complaint" (hereinafter referred to as the "First Amended Complaint") under seal.

II. PROCEDURAL HISTORY.

2. On October 7, 2015, Plaintiff filed "Plaintiff's Original Complaint" (DOC# 1) (hereinafter referred to as the "Complaint"). The Complaint seeks to recover damages for attorney fees and costs incurred, by Plaintiff, in representing JOE MONGE and ROSANA MONGE (a) in litigation against ALICIA ROJAS and FRANCISCO JAVIER JAYME, and (b) the preparation and filing of a lawsuit by JOE MONGE and ROSANA MONGE against Defendants DONA ANA TITLE COMPANY, *et al.* (hereinafter referred to as "Defendants").

3. To recover Plaintiff's damages, Plaintiff's Complaint asserts (a) Federal causes of action under The Racketeer Influenced & Corrupt Organizations Act ("RICO"), 18 U.S.C. §1961, and 18 U.S.C. §1964 (DOC# 1, Pages 126-282, Paragraphs 269-282), and (b) supplemental causes of action based on Texas state law. (DOC# 1, Pages 105-126, Paragraphs 251-268).

4. Plaintiff's Complaint also alleged *qui tam* causes of action under 31 U.S.C. §§3729-3730, brought on behalf of Plaintiff UNITED STATES OF AMERICA (hereinafter referred to as the "USA"). (DOC# 1, Pages 309-311, Paragraphs 377-378).

5. No responsive pleading has been filed.

III. ARGUMENT.

A. Plaintiff Will No Longer Pursue The *Qui Tam* Causes Of Action Under 31 U.S.C. §§3729-3730.

6. Over the course of the past few months, the undersigned has been in communication with Mr. John LoCurto, Assistant United States Attorney for the Western District of Texas, regarding this case. Mr. LoCurto has indicated to the undersigned that after investigation of the matters herein, the USA will probably decline to intervene and take over the *qui tam* causes of action asserted under 31 U.S.C. §§3729-3730, as the mortgage at issue in the Complaint was not federally insured, even though the mortgage loan application had sought a federally insured loan.

7. On April 20, 2016, the undersigned contacted Mr. LoCurto to meet and confer regarding this matter, and the filing of this Motion. Mr. LoCurto advised he would be calling the undersigned this morning, but has not as of the filing of this Motion.

8. Therefore, after consultation with the Office of the United States Attorney for the Western District of Texas, Plaintiff has decided to no longer pursue the *qui tam* causes of action asserted under 31 U.S.C. §§3729-3730.

B. The First Amended Complaint Is Necessary To Remove The *Qui Tam* Causes Of Action, And The USA As Plaintiff Herein.

9. Plaintiff is allowed "to file one amended complaint as a matter of right when the defendants have not filed a responsive pleading." *Lewis v. Fresne*, 252 F.3d 352, 360 (5th Cir. 2001).

10. Additionally, the Court should freely grant leave for Plaintiff to amend the Complaint. Fed. R. Civ. P. 15(a)(2) ("In all other cases, a party may amend its pleading only with the opposing party's written consent or the court's leave. The court should freely give leave when justice so requires."); *Stem v. Gomez*, 813 F.3d 205, 215 (5th Cir. 2016) ("Leave to amend should be freely give[n] . . . when justice so requires.") (quoting Fed. R. Civ. P. 15(a)(2), internal quotation marks omitted); *Marucci Sports, LLC v. NCAA*, 751 F.3d 368, 378 (5th Cir. 2014) ("Rule 15(a) requires a trial court to grant leave to amend freely, and the language of this rule evinces a bias in favor of granting leave to amend.") (quoting *Jones v. Robinson Prop. Grp., LP*, 427 F.3d 987, 994 (5th Cir. 2005)).

11. Accordingly, Plaintiff herewith submits the First Amended Complaint to remove the *qui tam* causes of action under 31 U.S.C. §§3729-3730, and the USA as a plaintiff in this case. The First Amended Complaint makes the following changes to the Complaint:

a. Removes the *qui tam* causes of action under 31 U.S.C. §§3729-3730;

b. Removes the USA as a plaintiff in the above-styled and numbered cause of action;

c. Adds further specificity and clarity as to Plaintiff's standing; and,

d. Adds further specificity and clarity as to Plaintiff's damages.

12. A copy of said First Amended Complaint, with the proposed changes redlined, is attached hereto as Exhibit A, in order to make the changes readily apparent to the Court.

13. The proposed First Amended Complaint is attached hereto as Exhibit B.

C. The First Amended Complaint Is Necessary, As The Statute Of Limitations To File The Racketeering Causes Of Action, Filed In The Complaint, Has Passed.

14. As discussed in the Complaint, the causes of action dealing with the agreements and contracts related to the Thoroughbred Property were inherently undiscoverable due to the fraud and/or the fraudulent concealment of material facts by Defendants herein, until March of 2012. (DOC# 1, Pages 104-105, Paragraphs 249-250).

15. Upon information and belief, the statute of limitations on Plaintiff's causes of action arising under The Racketeer Influenced & Corrupt Organizations Act ("RICO"), 18 U.S.C. §1961, and 18 U.S.C. §1964, expired in March of 2016.

16. Plaintiff has conducted a good faith and due diligent search for a RICO case filed, by JOE MONGE and ROSANA MONGE, against Defendants herein. Based upon information and belief, JOE MONGE and ROSANA MONGE have not timely filed a RICO case against Defendants. Additionally, JOE MONGE and ROSANA MONGE's bankruptcy attorney, Mr. E.P. Bud Kirk, has stated JOE MONGE and ROSANA MONGE, who are retired, have grown weary of litigation, and have decided instead to spend their remaining years with affordable

shelter of their own around them.

17. Therefore, the Court should grant Plaintiff leave to file the First Amended Complaint, as justice so requires, because Plaintiff would be unable to file a separate RICO case against Defendants, due to the possible running of the statute of limitations, should Plaintiff's RICO causes of action be dismissed along with the *qui tam* causes of action under 31 U.S.C. §§3729-3730.

D. Plaintiff Is Able To Conduct The Action.

18. The False Claims Act holds that "[b]efore the expiration of the 60-day period or any extensions obtained under paragraph (3), the Government shall (A) proceed with the action, in which case the action shall be conducted by the Government; or (B) notify the court that it declines to take over the action, in which case the person bringing the action shall have the right to conduct the action." 31 U.S.C. §3730(b)(4)(A)-(B).

19. As the USA will probably notify this Court that it will decline to take over the *qui tam* action asserted herein, Plaintiff has the right to conduct the remainder of this case, and remove the USA as a plaintiff in this case. 31 U.S.C. §3730(b)(4)(A)-(B)

20. As discussed above, no responsive pleading has been filed in this case, and this Motion is not offered for purposes of delay, but is requested in the interests of justice and fair play. Thus, the Court should grant Plaintiff leave to file the First Amended Complaint.

IV. PRAYER.

WHEREFORE, Plaintiff prays that the Court grants this Motion, and issues the attached Order granting Plaintiff leave to file the First Amended Complaint.

April 21, 2016

Respectfully submitted,

THE LAW OFFICES OF MICHAEL R. NEVAREZ
A Professional Corporation
5915 Silver Springs Drive
Building 6, Suite B
El Paso, Texas 79912
Telephone: (915) 584-8000
Facsimile: (915) 584-8024

/s/ Michael R. Nevarez
MICHAEL R. NEVAREZ
State Bar No. 14933400

Attorney for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing **PLAINTIFF'S MOTION FOR LEAVE TO FILE PLAINTIFF'S FIRST AMENDED COMPLAINT**, with all supporting attachments, exhibits, and affidavits referenced therein, if any, was served by regular first class mail, postage prepaid, to the following parties in interest, on this April 21, 2016:

ATTORNEY GENERAL OF THE UNITED STATES:
Attorney General of the United States
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530-0001

UNITED STATES ATTORNEY FOR THE WESTERN DISTRICT OF TEXAS:
United States Attorney for the Western District of Texas
700 East San Antonio Avenue, Suite 200
El Paso, TX 7990

/s/ Michael R. Nevarez
MICHAEL R. NEVAREZ

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
EL PASO DIVISION

UNITED STATES OF AMERICA	§	
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	§
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ORDER GRANTING PLAINTIFF'S MOTION FOR LEAVE TO FILE PLAINTIFF'S FIRST AMENDED COMPLAINT

After considering "Plaintiff's Motion For Leave To File Plaintiff's First Amended Complaint", the Court is of the opinion that the Motion should be granted as set forth below, and enters the following Order:

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that "Plaintiff's Motion For Leave To File Plaintiff's First Amended Complaint" is GRANTED.

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Plaintiff may forthwith file "Plaintiff's First Amended Complaint".

IT IS SO ORDERED.

# # #

SIGNED on ________________________, 2016.

____
DAVID BRIONES
UNITED STATES DISTRICT JUDGE

PREPARED BY:
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Attorney for Plaintiff